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APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/075,284 02/15/2002 Kazuaki Sasaki H&A-107 9039 **EXAMINER** 7590 04/27/2004 MATTINGLY, STANGER & MALUR, P.C. MANTIS MERCADER, ELENI M 1800 Diagonal Road, Suite 370 ART UNIT PAPER NUMBER Alexandria, VA 22314 3737 DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Application			A - B - A - N	\(\frac{1}{2} \)	
Examiner Elemi Manish Mercader 3737 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Edensions of time may be available under the provisions of 37 CRF 1.136(a). In on event, however, may a raphy be timely filled if the period for rely is period above, the maximum statistory period will apply and will apply a 104 by the will be considered limely. If NO period for rely is period above, the maximum statistory period will apply and will apply a 104 by the period for rely is period above. The maximum abstractly period will apply and will apply a 104 by the period for rely is period above. The maximum statistory period will apply and will apply a 104 by the period of the considered limely. If NO period for rely is period above, the maximum statistory period will apply and will apply a 104 by the period of the period of the period of the communication. If NO period for rely is period above, the maximum statistory period will apply and will apply a 104 by the period of the period of the period of the period of the communication. Any purply reviewd by the Critical the fill has been another. Any purply reviewd by the Critical the fill has been another. 1) ■ Responsive to communication(s) filled on 04 February 2004. 2a) ■ This action is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ■ Claim(s) 1.4 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5 Claim(s) 1.4 is/are rejected. 7 Claim(s) 1.4 is/are allowed. 9 Claim(s) 1.4 is/are allowed. 10 Is/are objected to by the Examiner. Application Papers 9 The specification is objected to by the Examiner. Application Papers 9 The specification is objected to by the E		10	Application No.	Applicant(s)	
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Art Unit: 3737

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection. The amendments introducing at least these limitations "continuous insonation time...while experiencing said cavitation" and "continuous insonation time...while said exposed region is generating said audible sound" constitute new grounds of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 3. Claims1 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by Rosenchein et al. '558.

Rosenchein et al.'558 teach setting a therapeutic transducer to operate at a continuous mode insonation in order to maintain cavitation at a region of interest to be treated (see col. 3, lines 62-67 and col. 4, lines 1-34) while the operator is allowed to watch or listen (see col. 5, lines 4-19) from a display and/or a microphone and determine whether cavitation is occurring under the desired conditions (col. 7, lines 60-67 and col. 8, lines 1-31). The microphone provides the audible sound, which is correlated with the occurrence of cavitation (col. 8, lines 18-31).

Art Unit: 3737

Claim Rejections - 35 USC § 103

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenchein et al. '558.

While Rosenchein et al. '558 teach use of the microphone to determine whether cavitation is occurring at the desired conditions as stated above, there is no explicit teaching that the frequency detected is twice that of the transmitted ultrasound. However, since Rosenchein et al. '558 describe the capability to determine from the sound the presence and maintenance of cavitation (see col. 8, lines 18-31), then it would have been obvious to one skilled in the art at the time that the invention was made that the detected frequencies (see col. 5, lines 12-19; describing detection of frequencies from the microphone) would be those emitted at the occurrence and maintenance of cavitation, thereby including those at a frequency of twice of the emitted ultrasound therapy.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenchein et al. '558 in view of Acker et al. '774, of record.

While Rosenchein et al.'558 teach a warning signal (thereby an alarm) in association with feedback when the conditions are not met (see col. 8, lines 18-31), they do not explicitly teach warning when a set value is reached.

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Acker et al.'774 teach means for generating an alarm when received signal intensity of harmonics of said therapeutic ultrasound reaches a set value or more (see col. 13, lines 21-24).

Therefore, it would have been obvious to one skilled in the art at the time that the invention was made to have modified Rosenchein et al.'558 and incorporated the teachings of Acker et al.'774 as an alternative way of alarming the operator of the non desired therapeutic conditions.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni Mantis Mercader whose telephone number is 703 308-0899. The examiner can normally be reached on Mon. - Fri., 8:00 a.m.-6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eleni Mantis Mercader Primary Examiner Art Unit 3737